

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PEDRO JOSE REYES JR.,

Plaintiff,

v.

EXPERIAN INFORMATION
SOLUTIONS, INC., WEIMARK CREDIT
INFORMATION SERVICES, and
MICROBILT CORPORATION.

Defendants.

Case No. 1:16-cv-09061-PAE

ECF Case

**EXPERIAN INFORMATION SOLUTIONS, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES**

NOW COMES Defendant Experian Information Solutions, Inc. (“Experian”), by and through its undersigned counsel, and in answer to the Complaint of Plaintiff Pedro Jose Reyes Jr. (“Plaintiff”), states as follows:

PRELIMINARY STATEMENT

1. In response to paragraph 1 of the Complaint, Experian admits that Plaintiff has alleged claims under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), and the New York Fair Credit Reporting Act, N.Y. Gen. Bus. L. § 380 *et seq.* (“NY FCRA”). With regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and, therefore, denies those allegations. Experian affirmatively states that the allegations are vague as to the specific consumer reports referenced in the allegations, and on that basis, Experian denies, generally and specifically, each and every allegation pertaining to consumer reports in paragraph

1. Except as specifically admitted, Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 1.

2. In response to paragraph 2 of the Complaint, with regard to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 and, on that basis, denies, generally and specifically, each and every allegation. Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 2.

3. In response to paragraph 3 of the Complaint, Experian admits that the Complaint seeks damages pursuant to the FCRA and the NY FCRA. Experian denies that Plaintiff is entitled to relief under these statutes or under any other law. Experian denies each and every remaining allegation contained in paragraph 3.

JURISDICTION AND VENUE

4. In response to paragraph 4 of the Complaint, Experian admits that Plaintiff has alleged jurisdiction based on 15 U.S.C. § 1681p.

5. In response to paragraph 5 of the Complaint, Experian admits that Plaintiff has alleged diversity jurisdiction under 28 U.S.C. § 1332. Experian admits that Plaintiff has alleged supplemental jurisdiction under 28 U.S.C. § 1367(a).

6. In response to paragraph 6 of the Complaint, Experian admits that venue has been alleged in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391(b).

PARTIES

7. In response to paragraph 7 of the Complaint, Experian admits, upon information and belief, that Plaintiff is an adult person residing in the State of New York, Bronx County. Experian admits, upon information and belief, that Plaintiff is a “consumer” within the meaning of 15 U.S.C. § 1681a(c) and N.Y. Gen. Bus. L. § 380-a(b).

8. In response to paragraph 8 of the Complaint, Experian admits that it is a “consumer reporting agency” as that term is defined in 15 U.S.C. § 1681a(f) and N.Y. Gen. Bus. L. § 380-a(e). Experian admits that it is an Ohio corporation. Experian admits that it is duly authorized and qualified to do business in the State of New York.

9. In response to paragraph 9 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

10. In response to paragraph 10 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

FACTUAL BACKGROUND

11. In response to paragraph 11 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

12. In response to paragraph 12 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

13. In response to paragraph 13 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

14. In response to paragraph 14 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

15. In response to paragraph 15 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

16. In response to paragraph 16 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

17. In response to paragraph 17 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

18. In response to paragraph 18 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

19. In response to paragraph 19 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

20. In response to paragraph 20 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

21. In response to paragraph 21 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

22. In response to paragraph 22 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 22 and, on that basis, denies them.

23. In response to paragraph 23 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

24. In response to paragraph 24 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

25. In response to paragraph 25 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

26. In response to paragraph 26 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

27. In response to paragraph 27 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

28. In response to paragraph 28 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

29. In response to paragraph 29 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

30. In response to paragraph 30 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

31. In response to paragraph 31 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

32. In response to paragraph 32 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

33. In response to paragraph 33 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

34. In response to paragraph 34 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

35. In response to paragraph 35 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

36. In response to paragraph 36 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

37. In response to paragraph 37 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

38. In response to paragraph 38 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and, therefore, denies those allegations. Experian affirmatively states that the allegations are vague as to the specific consumer reports referenced in the allegations, and that basis, denies, generally and specifically, each and every remaining allegation therein.

39. In response to paragraph 39 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

40. In response to paragraph 40 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and, therefore, denies those allegations. Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 40.

41. In response to paragraph 41 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

42. In response to paragraph 42 of the Complaint, with regard to the allegations related to plaintiff and entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies generally and specifically, each and every allegation contained therein. Experian affirmatively states that the allegations of paragraph 42 are vague as to the specific consumer reports referenced in the allegations, and on that basis, denies, generally and specifically, each and every remaining allegation contained therein.

43. In response to paragraph 43 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

44. In response to paragraph 44 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a

belief as to the truth or falsity of those allegations and, therefore, denies those allegations.

Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 44.

FIRST CAUSE OF ACTION

45. In response to paragraph 45 of the Complaint, Experian incorporates by reference, as if fully set forth herein, its responses to paragraphs 1 to 44 of the Complaint. To the extent not already answered, Experian denies all allegations therein.

46. In response to paragraph 46 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 and, on that basis, denies generally and specifically, each and every allegation contained therein. Experian affirmatively states that the allegations of paragraph 46 are vague as to the specific consumer reports that were allegedly prepared, compiled, issued, assembled, transferred, published, and otherwise reproduced by Experian, and on that basis, denies, generally and specifically, each and every remaining allegation contained therein.

47. In response to paragraph 47 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 and, on that basis, denies generally and specifically, each and every allegation contained therein. Experian affirmatively states that the allegations of paragraph 47 are vague as to the specific consumer reports referenced in the allegations, and on that basis, denies, generally and specifically, each and every allegation remaining contained therein. Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 47.

48. In response to paragraph 48 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 and, on that basis, denies generally and specifically, each and every allegation contained therein. Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 48.

49. In response to paragraph 49 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

50. In response to paragraph 50 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

51. In response to paragraph 51 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

52. In response to paragraph 52 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

53. In response to paragraph 53 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

54. In response to paragraph 54 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

55. In response to paragraph 55 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and, therefore, denies those allegations. Experian affirmatively states that the allegations of paragraph 55 are vague as to the specific consumer reports referenced in the allegations, and on that basis, denies, generally and specifically, each and every allegation contained therein.

56. In response to paragraph 56 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and, therefore, denies those allegations. Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 56.

SECOND CAUSE OF ACTION

57. In response to paragraph 57 of the Complaint, Experian incorporates by reference, as if fully set forth herein, its responses to paragraphs 1 to 56 of the Complaint. To the extent not already answered, Experian denies all allegations therein.

58. In response to paragraph 58 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 and, on that basis, denies generally and specifically, each and every allegation contained therein. Experian affirmatively states that the allegations of paragraph 58 are vague as to the specific consumer reports that were allegedly prepared, compiled, issued, assembled, transferred, published, and otherwise reproduced by Experian, and on that basis, denies, generally and specifically, each and every remaining allegation contained therein.

59. In response to paragraph 59 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 and, on that basis, denies generally and specifically, each and every allegation contained therein. Experian affirmatively states that the allegations of paragraph 59 are vague as to the specific consumer reports referenced in the allegations, and on that basis, denies, generally and specifically, each and every allegation contained therein. Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 59.

60. In response to paragraph 60 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and, therefore, denies those allegations. Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 60.

61. In response to paragraph 61 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

62. In response to paragraph 62 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

63. In response to paragraph 63 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

64. In response to paragraph 64 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

65. In response to paragraph 65 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

66. In response to paragraph 66 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 and, on that basis, denies, generally and specifically, each and every allegation contained therein.

67. In response to paragraph 67 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and, therefore, denies those allegations. Experian affirmatively states that the allegations of paragraph 67 are vague as to the specific consumer reports referenced in the allegations, and on that basis, denies, generally and specifically, each and every allegation contained therein. Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 67.

68. In response to paragraph 68 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and, therefore, denies those allegations. Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 68.

69. In response to paragraph 69 of the Complaint, with regard to allegations related to entities other than Experian, Experian is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and, therefore, denies those allegations.

Experian denies, generally and specifically, each and every remaining allegation contained in paragraph 69.

RESPONSE TO DEMAND FOR JURY TRIAL

Experian admits that Plaintiff has demanded trial by jury on all issues. Experian denies that Plaintiff is entitled to relief on any cause of action.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint herein, and each cause of action thereof, fails to set forth facts sufficient to state a claim upon which relief may be granted against Experian and further fails to state facts sufficient to entitle Plaintiff to the relief sought, or to any other relief whatsoever from Experian.

SECOND AFFIRMATIVE DEFENSE

All of Plaintiff's claims against Experian are barred by the qualified immunity of 15 U.S.C. § 1681h(e).

THIRD AFFIRMATIVE DEFENSE

All claims against Experian are barred because all information Experian communicated to any third person regarding Plaintiff was true.

FOURTH AFFIRMATIVE DEFENSE

Experian is informed and believes and thereon alleges that any purported damages allegedly suffered by Plaintiff are the results of the acts or omissions of third persons over whom Experian had neither control nor responsibility.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages.

SIXTH AFFIRMATIVE DEFENSE

The Complaint and each claim for relief therein are barred by laches.

SEVENTH AFFIRMATIVE DEFENSE

Any alleged damages sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff and/or third parties and resulted from Plaintiff's and/or third parties' own negligence which equaled or exceeded any alleged negligence or wrongdoing by Experian.

EIGHTH AFFIRMATIVE DEFENSE

Any damages which Plaintiff may have suffered, which Experian continues to deny, were the direct and proximate result of the conduct of Plaintiff. Therefore, Plaintiff is estopped and barred from recovery of any damages.

NINTH AFFIRMATIVE DEFENSE

All claims for relief in the Complaint herein are barred by the statute of limitations.

TENTH AFFIRMATIVE DEFENSE

The Complaint, and each claim for relief therein that seeks equitable relief, are barred by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages were not caused by Experian, but by an independent intervening cause.

TWELFTH AFFIRMATIVE DEFENSE

Any claims for exemplary or punitive damages violate Experian's rights under the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and analogous provisions of any applicable State Constitutions.

THIRTEENTH AFFIRMATIVE DEFENSE

Experian reserves the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

WHEREFORE, Defendant Experian Information Solutions, Inc. prays as follows:

- (1) That Plaintiff take nothing by virtue of the Complaint herein and that this action be dismissed in its entirety;
- (2) For costs of suit and attorneys' fees herein incurred; and
- (3) For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 20, 2017

Respectfully submitted

/s/ Michael M. Klotz

Michael M. Klotz

Chris J. Lopata

JONES DAY

250 Vesey Street

New York, NY 10281-1047

Telephone: (212) 326-3939

Email: mklotz@jonesday.com

cjlopata@jonesday.com

*Attorneys for Defendant
Experian Information Solutions, Inc.*

CERTIFICATE OF SERVICE

I, Michael M. Klotz, certify that on January 20, 2017, I caused the foregoing EXPERIAN INFORMATION SOLUTIONS, INC.'S ANSWER AND AFFIRMATIVE DEFENSES to be filed with the Clerk of the Court and served upon all counsel of record via the Court's CM/ECF system.

/s/ Michael M. Klotz

Michael M. Klotz

*Attorney for Defendant
Experian Information Solutions, Inc.*